

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 51 OF 1988

1. Shri Bhiku Jiju Sabale
Since deceased through his heirs
and Legal Rep.
- 1A. Shri Jaywant Bhiku Sabale
- 1B. Smt. Mangal Eknath Bhilare
- 1C. Smt. Kusum Ashok Mane
- 1D. Smt. Kamal Vitthal Babar
- 1E. Smt. Padma Vishwas Babar
- 1F. Smt. Seema Bharat Bhoite
- 1G. Smt. Anita Sanjay Solaskar
2. Tatyia Jiju Sabale
3. Vishwas Jiju Sabale
4. Anjira Jiju Sabale
5. Krishnabai Nanasaheb Wagh
6. Muktabai Ganpat Singate .. Appellants

Vs.

1. Dada Mukinda Sable
since deceased through his LRs.
- 1-1A. Smt. Indubai Dada Sable
- 1-1B. Eshwar Dada Sable
- 1-1C. Nana Dada Sable
- 1-1D. Devanand Dada Sable
- 1-1E. Ms. Seema Dada Sable
2. Agricultural Development Branch
Satara, through it's Manager
at Satara. .. Respondents

Mr. R.M. Pethe i/by Mr. R.G. Ketkar for appellants.

Mr. N.V. Bandiwadkar for respondent nos. 1-1A to 1-1D.

CORAM: B.H. MARLAPALLE, J.

Date : June 11, 2007.

ORAL JUDGMENT:

1. The following two substantial questions of law have been framed while admitting this second appeal:-

(a) Whether the suit is within time under Article 54 of the Limitation Act, 1963? and

(b) Whether the discretion under Section 20 of the Specific Relief Act, 1963 should be exercised in favour of the plaintiff?

2. The brief undisputed facts leading to this second appeal are, that the father of the appellants-plaintiff entered into an agreement on 21/5/1954 and signed sale deed of the suit land admeasuring 12 R. located in Gat No.19 of village Shivthar, Taluka and District Satara for a consideration of Rs.400/-. On the same day it was also agreed between the parties that defendant no.1 will reconvey the land on repayment of Rs.400/- to the defendant no.1 by the plaintiffs' father. The

plaintiffs' father Juju Bhau Sabale died in the year 1957 and admittedly during the period of three years he did not offer the return of Rs.400/- and demanded reconveyance of the suit land. On 28/4/1980 the plaintiffs issued a legal notice calling upon the defendant no.1 to reconvey the suit land by accepting the amount of Rs.400/-. There was no response and, therefore, Regular Civil Suit No. 393 of 1980 was filed on or about 1/9/1980. In the meanwhile, the suit land was mortgaged for obtaining loan by the defendant no.1 in favour of defendant no.2 and, therefore, the latter one was accordingly impleaded. The defendant no.1 filed his Written Statement at Exh.14 and oppose the suit. It was pointed out that some portion of the land was acquired by the Government and that he was a tenant in the suit land before the sale deed was signed. It was further stated that the plaintiff had waived off his right of repurchasing the land by accepting some additional amount from the defendant no.1. On the point of law, it was stated that if the transaction was considered to be a mortgage, the suit for redemption was not brought in the form required for under the Civil

Procedure Code and, therefore, it was not tenable. The parties adduced evidence and on the issue of limitation the trial court held that the suit was brought within time, more particularly because the learned counsel for the defendant had given up the issue of limitation. The trial court further held that defendant no.1 failed to prove that the plaintiff had given away his right by receiving money and that he had made any improvement in the land by incurring expenses of Rs.2500/-. The suit was, therefore, decreed by directing the defendant o.1 to reconvey the suit land to the plaintiffs under a registered reconveyance deed by accepting Rs.400/- from the plaintiffs at the plaintiffs' expenses within one month from the date of order. Defendant nos.1 and 2 were further directed to give possession of the suit land within one month from the date of the order and the plaintiffs were directed to deposit the amount of Rs.400/- in the court within 15 days from the date of the order.

3. The defendant no.1 challenged the decree passed by the trial court in Civil Appeal No. 238 of

1984 and the learned District Judge, Satara was pleased to allow the appeal by his Judgment and Order dated 18/8/1987. The Lower Appellate Court held that the suit was not within limitation and, therefore, the decree passed by the trial court was unsustainable.

4. As per Article 54 of the Limitation Act, a suit for specific performance of contract is required to be filed within three years from the date fixed for the performance, or, if no such date is fixed, when the plaintiff has noticed that the performance is refused.

5. The agreement for reconveyance is at Exh.17 of which specific performance was sought, whereas the sale deed dated 21/5/1954 is at Exh.34. The defendant brought on record another agreement at Exh.29 signed on 25/12/1969 and it was sought to be submitted that by the said agreement the plaintiff no.1 had given up the claim for reconveyance by accepting Rs.250/- and, therefore, the defendant no.1 claimed that he had become true owner of the suit property. Both the courts below held that the agreement at Exh.29 could

not be held to be a genuine document and, therefore, it was discarded. There is no dispute that on signing the agreement at Exh.17 the defendant no.1 was put in possession of the suit land and continues to be so as of now also. It was admitted between the parties that the agreement at Exh.34 was an absolute sale deed and the plaintiffs were claiming reconveyance on the basis of the said agreement. The suit was filed after almost 26 years after the agreement at Exhs.17 and 34 were signed. The plaintiffs themselves put up a case that in the year 1972 they had requested defendant no.1 to reconvey the suit land and that he had refused to do so. Plaintiff no.2 - Tatyia had stated that in the year 1973 he had refused to execute the sale deed and the defendant no.1 had approached him twice before that i.e. first time in the year 1964 and second time in the year 1972 showing his readiness to execute the reconveyance deed. Similarly Bhiku - plaintiff no.1 also stated that when he had approached defendant no.1 some time in the year 1972 he had refused to sign the reconveyance deed. Thus, plaintiffs had admitted that some times in the year 1972-73 the defendant no.1 had refused to sign the reconveyance deed and return the

suit land. Thus, the cause of action arose to file the suit in 1972-73 and it was required to be filed within three years from that time onwards. The suit was filed in September, 1980 i.e. after about 7 years from the time the cause of action arose. The trial court held the issue of limitation in favour of the plaintiffs only on the ground of the purported concession given by the learned Advocate for the defendant no.1. When the issue of limitation was specifically framed, it could not be decided merely on the basis of the concession given in the course of the oral arguments. If the pursis to this effect was filed, it would be a different aspect and, therefore, the Lower Appellate Court rightly held that the suit was hit by limitation as the cause of action arose and latest by 1972-73, if not earlier. The view taken by the Lower Appellate Court cannot be termed as illegal and, therefore, the first substantial question of law framed in this second appeal has to be answered against the plaintiffs.

6. Once it is held that the suit was not within limitation, it is not necessary to decide the second

substantial question of law. However, having regards to the scheme of Section 20 of the Specific Relief Act, 1963, the case of the plaintiffs does not fit in under any of the clauses in subsection 2 therein.

7. Hence, there is no case made out to cause interference in the decree passed by the Lower Appellate Court and the second appeal, therefore, fails. The same is hereby dismissed by confirming the decree passed by the Lower Appellate Court. No costs.

(B.H. Marlapalle, J.)